



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCO - 175029

PRELIMINARY RECITALS

Pursuant to a petition filed on June 15, 2016, under Wis. Admin. Code § HA 3.03, to review decisions by the Brown County Human Services regarding overpayments of Child Care (CC) benefits, a hearing was held on August 24, 2016, by telephone. At the request of the county agency, the record was held open for 10 days for the submission of additional information. At the request of the petitioner, a hearing set for July 21, 2016, was rescheduled.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$7,421.75 in Wisconsin Share Child Care Benefits due to client error in reporting household composition and income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED], Fraud Investigator
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County. She was receiving Wisconsin Shares Child Care benefits in the period of August, 2011, through February 28, 2013, for her minor child, [REDACTED], who was apparently born in June or July, 2011, on a birth date otherwise unspecified in this record.
2. On January 23, 2013, the agency referred the petitioner's case to the Brown County Sheriff's Department for a fraud investigation because an agency income maintenance worker had performed a background check on the petitioner's boyfriend, [REDACTED], and determined that he was listed as living with her at [REDACTED] in the Wisconsin Department of Transportation records database, the Wisconsin Circuit Court Access Program (CCAP), and the U.S. Postal Service database. See, Exhibit #18.
3. The petitioner filed a combined application (for FS, MA and Wis. Shares benefits) with the county agency in February, 2011, for public assistance stating that she lived at [REDACTED].
4. On April 17, 2011, [REDACTED] received a traffic citation from Officer [REDACTED] of the Ashwaubenon Police Department and he provided [REDACTED] with a residence address of [REDACTED]. See, Exhibit #18, p. 4.
5. On June 13, 2011, [REDACTED] provided the circuit court with an address indicating he resided at [REDACTED] for purposes of the traffic citation, above. See, Exhibit #18.
6. In June or July, 2011, the petitioner's child [REDACTED] was born. On July 14, 2011, [REDACTED] was adjudicated to be the father of [REDACTED].
7. On May 11, 2012, the petitioner reported to the county agency that she had changed her address and now lived at [REDACTED]. See, Exhibit #18, p. 4.
8. On June 23, 2012, [REDACTED] provided the circuit court with an address update indicating he resided at [REDACTED]. See, Exhibit #18.
9. On September 17, 2012, [REDACTED] apparently updated his address with the circuit court and provided the [REDACTED]. See, Exhibit #18, p. 3.
10. [REDACTED] apparently informed his probation agent that he was living at [REDACTED] from August 17, 2011 – May 1, 2012; and at [REDACTED] from May 1, 2012 – probation ended on August 9, 2012. See, Exhibit #18, at p. 4.
11. [REDACTED] was listed at the [REDACTED] address with the U.S. Postal Service as of an inquiry on January 13, 2013.
12. Sheriff's Deputy [REDACTED] interviewed the petitioner on March 20, 2013, and the petitioner signed and acknowledged a written statement typed by [REDACTED] after she reviewed it, attesting to it that she signed voluntarily. See, Exhibits #19 & #20.
13. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that she met [REDACTED] in spring 2011. See, Exhibit #19 & #20.

14. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began living with her "off and on" when she moved into the residence at [REDACTED] Wisconsin in May, 2010. See, Exhibit #19 & #20.
15. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began staying with her at [REDACTED] Wisconsin, and she became pregnant in September, 2011. See, Exhibit #19 & #20.
16. On a date unknown in this record between August 1, 2011 and May 1, 2012, a child in common with [REDACTED] was born, i.e., their daughter, [REDACTED].
17. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began living with the petitioner consistently at [REDACTED] (when she moved into a new apartment) beginning in May, 2012, i.e., more than before when he had been staying over with her 4 or 5 nights per week, but sometimes disappearing for 2-3 days. See, Exhibit #19. He was reportedly there more consistently because the petitioner had agreed that [REDACTED]'s son [REDACTED] could live with them instead of with his biological mother, and [REDACTED] wanted this arrangement. [REDACTED]'s other and older son was also living there, and that was part of the reason [REDACTED] wanted to live there. See, Exhibits #19 & #20.
18. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began paying water, electric and cell phone bills at the [REDACTED] in about August, 2012, because she asked him to. This was for because he was living with her at the [REDACTED] address. See, Exhibit #19 & #20.
19. The petitioner reported to the agency in the first quarter of 2013 that [REDACTED] had been living with her since January 1, 2013. See, Exhibit #19 & #20.
20. On March 26, 2013, Sheriff's Deputy [REDACTED] interviewed the boyfriend, [REDACTED], and he signed and acknowledged a written statement typed by [REDACTED] after he reviewed it, attesting to it that he signed voluntarily. See, Exhibit #21.
21. [REDACTED] admitted in his written statement that he was living with the petitioner at the time school ended in early summer, 2012, in DePere, Wisconsin, at the time that [REDACTED] moved in, i.e., late May or early June, 2012. He did not state when he moved in with her for the first time. See, Exhibit #21.
22. At no time in 2012 did the petitioner report that [REDACTED] was living with her and had income. See, Exhibit #22, Case Comments from 2012.
23. [REDACTED] had the earned income described in Exhibit #14, #15 & #16; and none of this income had been reported by the petitioner prior to July 8, 2015, because she had not reported him as a household member prior to the first quarter of 2013.
24. On or about May 4, 2016, the agency issued two Child Care Overpayment Notices to the petitioner informing her that she had been overpaid \$2,584.73 in Child Care Benefits in the period of August 1, 2011 through July 21, 2012; and \$4,567.02 in Child Care Benefits in the period of August 1, 2012, through February 28, 2013, due to a client error in failing to report accurate household membership and income, i.e., she had not reported the father of her child was living with her in these two time periods. Biological father [REDACTED] was separately notified with a copy of both notices that he was jointly liable with the petitioner for these two overpayments for

the benefits issued for their daughter-in-common, [REDACTED]. The agency determined [REDACTED] should have been part of a 3 person household. See, Exhibits #1 & #3. The overpayments were computed as shown in Exhibit #5. And see, the CARES database, Claims for an Individual Screen. And see, Exhibits #3 & #5.

25. The petitioner received both of these four Notices and she appealed to the Division of Hearings & Appeals contesting all of these claims on June 15, 2016. See, Fair Hearing Request Form.
26. [REDACTED] did not appeal either of these Child Care Benefits overpayment claims or appear as a witness at the petitioner's hearing.

DISCUSSION

All Child Care Benefits funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat. § 49.155(1m). The agencies responsible for distributing Child Care Benefits are also required to take all steps necessary to recover funds paid to a childcare provider when the parent was not eligible for the level of benefits issued. Child Care Manual, Chapter 1, 10.3.0. **All overpayments must be recovered, regardless of fault, agency or client error.** See, Wis. Admin. Code §DCF 101.23(5).

The county agency determined that the petitioner was overpaid this amount of child care assistance because she had not accurately and timely reported that the biological father of the child was in the home and that he had substantial earned income. Further, when this income were verified, the agency found that the household income streams meant she needed to pay monthly co-payments to Wisconsin Shares for many benefit months in the 19 month period tested here. In short, if the income had been correctly and timely reported, she would have still been eligible for Child Care benefits, but she would have had to pay significant co-pays in some months, and in other months, she was not eligible at all. See, Exhibit #5; and see, Child Care Manual, Chapter 1.6.3.

Here, as in the companion Medical Assistance and FoodShare overpayment cases, it is crystal clear that the petitioner's boyfriend, and the biological father of [REDACTED], i.e., [REDACTED], was living in the same household as the petitioner and child from at least August 1, 2011, to at least the end of the first quarter of 2013.

In this case the overpayment consisted of benefits that the county agency determined to have been overpaid for 19 months because she did not report that her boyfriend, the biological father of her child, was living with her and that he had income continuously from work. Her boyfriend, [REDACTED], is also the adjudicated father of a child-in-common with the petitioner.

The standard in an overpayment action is whether the preponderance of the evidence shows that the overpayment occurs as alleged.

There are two sub-claims here, i.e., a \$2,854.73 Child Care overpayment for the period of August 1, 2011 to July, 31, 2012; and a second claim for \$4,587.02 for the period of August 1, 2012 to February 28, 2013.

It is uncontroverted by the petitioner's admission in her statement, as well as corroborated by [REDACTED]'s hearsay statement, that [REDACTED] was living with the petitioner at the [REDACTED] DePere residence from at least June 1, 2012 to February 28, 2013. See, Exhibits #20 & #21. In addition, it is crystal clear that the petitioner did not report to the agency [REDACTED] was living with her and had income until near the end of the first quarter of 2013. See, Exhibit #22, (*Case Comments* in calendar year 2012). When his income and presence were added to the household, she was eligible for less Child Care benefits than she actually

received, so she was overpaid. See, Exhibit #5. Nor has she pointed to any error in the calculations. See, Exhibit #6.

The earlier period of overpayment alleged, preceding most of the period prior to June 1, 2012, is more problematic on the presented evidence. The petitioner admitted in her statement to Deputy Sheriff [REDACTED] that she had been dating [REDACTED] since 2008 (i.e., for 5 years in the fall of 2013, see, Exhibit #20), and that he was living with her “off and on” after she moved in at [REDACTED] in May, 2010. See, Exhibit #20. But she also asserted that he was staying with her at [REDACTED] about “4 or 5 days a week”; and “about 5 days a week but never on the weekends”. See, Exhibit #19. She admitted that [REDACTED] had told his probation officer he was living at her [REDACTED] address in the spring of 2011.

Deputy Sheriff [REDACTED]'s report was hearsay evidence because she did not appear at the hearing, but it is useful and admissible evidence because it corroborates that [REDACTED] did indeed report to his probation agent that he was living at [REDACTED] from August 17, 2011 through May 1, 2012, when he then changed his address to the same [REDACTED] address that the petitioner was living at. See, Exhibit #18. Likewise, [REDACTED]'s report notes that [REDACTED] told Office [REDACTED] in Ashwaubenon on April 17, 2011, that he lived at [REDACTED]; and again re-stated that address to the court when the traffic citation appearance occurred on June 13, 2011. See, Exhibit #18.

While the evidence on the second claim is a closer call, I am satisfied that it is more likely than not that the petitioner and [REDACTED] were living in the same household in the period of August 1, 2011, through July 31, 2012, as well. In short, I conclude he was living in the petitioner's household from at least August 1, 2011, through at least February 28, 2013. He should have been reported, and his income reported, and it was not.

I can only conclude that the couple was playing fast and loose with the public assistance system, and that generally speaking, [REDACTED] was making the [REDACTED] and [REDACTED] residences his home at the same time as the petitioner. Indeed, she apparently became pregnant again in September, 2011, by [REDACTED] during his cohabitation, and soon after, two of his own children moved in with the petitioner and [REDACTED]. They were acting, and portraying themselves to the public, as a blended household. And as with the other FS and MA overpayment claims discussed above, the petitioner has not pointed to any mathematical or computational error by the agency. See also, Exhibit #5. Both of the Child Care overpayment Claim No. [REDACTED] (\$2,854.73) and Claim No. [REDACTED] (\$4,567.02) are fully affirmed here as established.

CONCLUSIONS OF LAW

The agency correctly seeks recovery of an Wisconsin Shares Child Care Benefits overpayment because petitioner did not report that the father of her child-in-common was living in the household and had earned income, causing the household to receive \$7,421.75 in Wisconsin Shares benefits that it was not entitled to receive in CC Overissuance Claims [REDACTED] (\$2,854.73); and [REDACTED] (\$4,567.02), i.e. a total of \$7,421.75.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

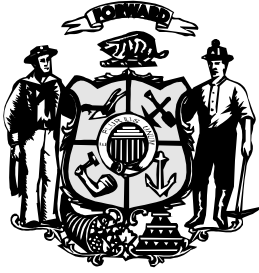
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of September, 2016

\s _____
Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 2, 2016.

Brown County Human Services
Public Assistance Collection Unit
Child Care Fraud